

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:FSH:MAN:TL-N-5360-00
HJSchneck

date:

to: Territory Manager Paul Rinaldi, Heavy Manufacturing
Attn: Robert Schnorbus, LMSB, Group 1644

from: Area Counsel (CC:LM:FSH:MAN)

subject: Taxpayer: [REDACTED] (U.I.L. #6501.08-00)
EIN: [REDACTED]
Taxable Year: [REDACTED] (Form 1120)

PROPER PARTY TO SIGN CONSENT FORMS ON ASSESSMENT AFTER STOCK
PURCHASE AND NAME CHANGE

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This memorandum responds to your request of September 11, 2000, for written advice concerning the appropriate language for the name line for a Form 872, Consent to Extend the Statute of Limitations on Assessment, ("Form 872") in connection with the [REDACTED] taxable year of [REDACTED] (known in [REDACTED] as [REDACTED]).

We include herein the language for Form 872 that should be executed by [REDACTED] (formerly known as [REDACTED]) following its acquisition by [REDACTED].

This advice is subject to post review by Chief Counsel's

National Office. Therefore, we ask that you wait ten working days from the date of this memorandum before acting upon this advice.

Facts

The examination division is currently auditing the [REDACTED] taxable year of [REDACTED] (" [REDACTED]"), a holding company engaged in the business of [REDACTED] in the United States. According to Revenue Agent Robert Schnorbus, the statute of limitations on assessment for [REDACTED]'s [REDACTED] tax year expires on [REDACTED]. [REDACTED] was incorporated in Delaware on [REDACTED]¹ and filed a Form 1120, U.S. Corporation Income Tax Return ("Form 1120") for its [REDACTED] tax year. In [REDACTED], [REDACTED] was the common parent of a consolidated group of corporations and directly owned [REDACTED] percent of the stock of [REDACTED] and [REDACTED], which directly owned [REDACTED] percent of [REDACTED], a [REDACTED] company, and [REDACTED], a [REDACTED] company, owned [REDACTED] percent and [REDACTED] percent of [REDACTED], respectively.

On [REDACTED], [REDACTED] and [REDACTED] (" [REDACTED] ")² entered into a Stock Purchase Agreement ("SPA") through which [REDACTED] acquired all of the outstanding stock of [REDACTED]. The agreement noted that the SPA was to be given retroactive effect to [REDACTED]. Pursuant to the terms of the SPA, [REDACTED] forgave debt owed by [REDACTED] which amounted to \$ [REDACTED] at [REDACTED]³. The forgiveness .

¹ [REDACTED] was originally incorporated as [REDACTED]. Pursuant to a Certificate of Amendment of Certificate of Incorporation dated [REDACTED], the name of the corporation was changed to [REDACTED].

² [REDACTED] is owned entirely by [REDACTED] (" [REDACTED] "), a Delaware company organized on [REDACTED]. [REDACTED] is entirely owned by [REDACTED], a subsidiary of [REDACTED] (" [REDACTED] "), which is one of the largest [REDACTED] in [REDACTED]. In [REDACTED], [REDACTED] acquired [REDACTED], a [REDACTED] company that owned [REDACTED].

³ The \$ [REDACTED] of debt forgiveness excluded \$ [REDACTED] paid by [REDACTED] based on an adjusted combined statutory surplus of [REDACTED] and [REDACTED] at [REDACTED] of \$ [REDACTED], a fee of [REDACTED].

of debt was accounted for as a capital contribution on [REDACTED]'s financial statements.

On [REDACTED], [REDACTED] filed with the Office of the Secretary of State of Delaware a Certificate of Amendment changing the company's name to [REDACTED]. In addition, [REDACTED] and [REDACTED] changed their corporate names to [REDACTED] and [REDACTED], respectively. Finally, effective [REDACTED], [REDACTED] contributed to [REDACTED] a corporation named [REDACTED].

Law and Analysis

In general, the statute of limitations on assessment expires three years from the date the tax return is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment of any tax except estate tax. The Form 872, Consent to Extend the Time to Assess Tax, is the form generally used by the Service to extend the statute of limitations on assessment. As the statute of limitations on assessment for the Form 1120 has yet to expire for [REDACTED]'s [REDACTED] year, a Form 872 can be executed to extend the statute of limitations on assessment for that return. I.R.C. § 6501(c)(4).

In the case of a consolidated group, we find guidance as to the appropriate entity to enter into a consent to extend the statute of limitations in the consolidated return regulations. Treas. Regs. § 1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent acts as the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its own name can give waivers and any waiver so given shall be considered as having been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). An agreement entered into by the common parent to extend the time within which to assess an income tax deficiency for the consolidated return year binds each member of the consolidated group during any part

\$ [REDACTED] for all its licenses and \$ [REDACTED] representing the increase in market value of the securities held by both companies at acquisition.

of such taxable year. Treas. Reg. § 1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. See Treas. Reg. § 1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985); Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985). In addition, a mere change in identity of the common parent does not affect its common parent status. See Treas. Reg. § 1.1502-75(d)(2). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence.

In the instant case, the separate corporate existence of [REDACTED] (whose name was then changed to [REDACTED]) continued after the stock purchase and subsequent name change. Therefore, even though [REDACTED] is now a subsidiary of [REDACTED] (the new common parent), [REDACTED] is the proper entity to extend the statute of limitations for the members of the former consolidated group during the taxable year ended [REDACTED].

The language for the name line on the Form 872 should be "[REDACTED] (E.I.N. [REDACTED]), formerly known as [REDACTED] (E.I.N. [REDACTED]) *." In addition, at the bottom of the page, the following language should be added: "*This is with respect to the consolidated income tax liability of [REDACTED] (E.I.N. [REDACTED]), formerly known as [REDACTED] (E.I.N. [REDACTED]) for the taxable year ended [REDACTED]."

Since the regulations under section 6501(c)(4) do not specify who may sign the Form 872 on behalf of a corporation, the Service applies the rules applicable to the execution of original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. In the case of corporate returns, I.R.C. § 6062 provides, generally, that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Accordingly, any such officer of [REDACTED] may sign the Form 872 consent, whether or not that person was the same individual who signed the [REDACTED] Form 1120. Rev. Rul. 83-41.

Also, if you have not yet done so, we recommend that you

verify the EIN of the corporation to be shown on Form 872. If any change in EIN occurred as a result of the transactions discussed herein, such change should be reflected on the form.

Furthermore, Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document these actions.

We further recommend that you pay strict attention to the rules set forth in the IRM that cover how to prepare and execute a Form 872. IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Again, we remind you that this advice is subject to National Office review. Accordingly, please wait ten working days from the date of this memorandum before acting upon this advice. If you have any questions concerning the advice provided in this memorandum, please contact Howard Schneck at (212) 264-1595, ext. 265.

ROLAND BARRAL
Area Counsel
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By: _____

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